

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	8:02CR211
	)	
v.	)	
	)	
MANDRELL SWINEY,	)	ORDER
	)	
Defendant.	)	
	)	

This matter is before the court on defendant Mandrell Swiney's motion to reduce sentence, Filing No. [39](#), and motion to amend/supplement motion to reduce sentence pursuant to crack cocaine Amendment 706, Filing No. [43](#). The court will grant the motion to amend/supplement the motion to reduce sentence and will consider all the defendant's filing with regard to his motion to reduce his sentence.

On June 12, 2003, the defendant, Mandrell Swiney, pled guilty to Count I of an indictment charging conspiracy to distribute and possession with intent to distribute over 50 grams of cocaine base. Filing Nos. [1](#) and [24](#). A presentence investigation report was prepared in which it was found that the defendant's base offense level, based on over 1.5 kilograms of crack cocaine, was 38. He received a two-level enhancement for possession of two firearms, and an additional two-level enhancement for recklessly endangering lives while fleeing from law enforcement, resulting in a total offense level of 42. The defendant received a minus three for acceptance of responsibility. With the defendant's Category VI criminal history, the resulting guideline sentencing range is 360 months to life. On November 6, 2003, Judge Shanahan sentenced the defendant to 360 months' imprisonment. Filing Nos. [32](#) and [34](#). On December 21, 2007, the defendant filed a motion seeking a modification of his sentence pursuant to crack cocaine Amendment 706, and on March 24, 2008, he filed a Motion to Amend/Supplement his Motion to Reduce Sentence. Filings No. [39](#) and [43](#). The parties submitted briefs at the court's

request. The facts and legal contention are adequately presented in the materials before the court and a hearing would not aid the decision process; thus, the court finds that an evidentiary hearing is not warranted.

Pursuant to 18 U.S.C. § 3582(c)(2), a defendant's sentence may only be reduced when he was "sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." Even though Mr. Swiney's base offense level is reduced, from 38 to 36, other enhancements produced a final offense level of 37, at which the guideline range is still 360 months to life imprisonment. Even with the two-level reduction, the previous range of 360 months to life is unchanged. Therefore, the court finds that Amendment 706 has no effect on the defendant's sentence.

Even if the court were to determine that the defendant was entitled to resentencing, the court finds, based on the record, that the defendant is not entitled to a lower sentence. A review of the record and the plea agreement indicates that the plea agreement should not be disturbed given all the enhancements forgone by the government to arrive at the sentence imposed.

IT IS ORDERED:

1. Defendant Mandrell Swiney's motion to amend/supplement his motion to reduce sentence, Filing No. [43](#), is granted; and

2. Defendant, Mandrell Swiney's motion to reduce sentence, Filing No. [39](#), is denied.

DATED this 8<sup>th</sup> day of September, 2008.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge